

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

HARRISON MELVIN X. PEARISON, JR. v. STATE OF TENNESSEE

Appeal from the Circuit Court for Johnson County
No. 4795 Robert E. Cupp, Judge

No. E2006-00768-CCA-R3-HC - Filed September 5, 2006

The petitioner, Harrison Melvin X. Pearison, Jr., appeals from the trial court's order denying his petition for writ of habeas corpus. The state has filed a motion requesting that this court affirm the trial court's denial of relief pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The petition fails to establish a cognizable claim for habeas corpus relief. Accordingly, the state's motion is granted and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON and NORMA MCGEE OGLE, JJ., joined.

Harrison Melvin X. Pearison, Jr., Mountain City, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; John H. Bledsoe, Assistant Attorney General; Joe C. Crumley, Jr., District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

The petitioner was convicted in the Hamilton County Criminal Court for aggravated arson in the burning of his former marital residence. The trial court imposed a twenty-year sentence in the Tennessee Department of Correction. On appeal, the judgment was affirmed. See State v. Harrison Pearison, No. 03C01-9802-CR-00076 (Tenn. Crim. App. Aug. 31, 1999), app. denied (Tenn. Mar. 13, 2000).¹

On December 28, 2005, the petitioner filed a pro se petition for writ of habeas corpus. The petitioner claimed that the state failed to give notice of its intent to seek enhanced punishment prior to trial, that the prior convictions used to enhance the petitioner's sentence were more than ten years old, and that the state failed to prove every element of the offense as listed in the indictment. The state filed a motion to dismiss, asserting that none of the alleged grounds entitled the petitioner to

¹We note the different spelling of the petitioner's last name in the record of the present case.

relief as they failed to establish either a void judgment or an expired sentence. Finding the state's motion well-taken, the trial court summarily denied the petition.

In Tennessee, "[a]ny person imprisoned or restrained of his liberty, under any pretense whatsoever, except [those held under federal authority], may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment and restraint." Church v. State, 987 S.W.2d 855, 857 (Tenn. Crim. App. 1998); Tenn. Code Ann. § 29-21-101. The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. Archer v. State, 851 S.W.2d 157, 163 (Tenn. 1993) (citing State ex rel. Newsom v. Henderson, 221 Tenn. 24, 424 S.W.2d 186, 189 (1968)). A writ of habeas corpus may be granted only when the petitioner has established lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. See Ussery v. Avery, 222 Tenn. 50, 432 S.W.2d 656 (1968); State ex rel. Wade v. Norvell, 1 Tenn. Crim. App. 447, 443 S.W.2d 839 (1969). The burden is on the petitioner to establish that the judgment is void or that the sentence has expired. State ex rel. Kuntz v. Bomar, 214 Tenn. 500, 504, 381 S.W.2d 290, 291-92 (1964). A "habeas corpus petition may be dismissed without a hearing, and without the appointment of counsel for a hearing" if the petition does not allege facts showing that the petitioner is entitled to relief. State ex rel. Edmondson v. Henderson, 421 S.W.2d 635, 636 (Tenn.1967) (citing State ex rel. Byrd v. Bomar, 381 S.W.2d 280 (Tenn. 1964)).

In the present case, the petitioner has not established that he is entitled to habeas corpus relief. He makes no claim that his sentence has expired, and his petition does not show a void judgment, that is, "one in which the judgment is facially invalid because the court did not have the statutory authority to render such judgment." Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998). The trial court correctly found that the petitioner's claims of a sentence enhanced without proper notice or by improperly applied prior convictions, even if proven, would not render his judgment void and therefore do not support issuance of the writ. The petitioner's final claim is that the state failed to prove every element of aggravated arson as charged in the indictment "in that the indictment charged the petitioner with setting fire to his wife's home when in all actuality it was his own property." The trial court found that the petitioner's claim amounted to a challenge to the sufficiency of the evidence that was not cognizable in a habeas corpus proceeding. See Grant v. State, 507 S.W. 2d 133, 136 (Tenn. Crim. App. 1973). In addition to his failure to attach the challenged judgments to his petition, the petitioner has failed to include the challenged indictment in the record, making meaningful review of this claim impossible. A habeas corpus proceeding, however, is not the proper vehicle for testing the sufficiency of an indictment unless the indictment is "so defective as to deprive the court of jurisdiction." Dykes v. Compton, 978 S. W. 2d 528, 529 (Tenn. 1998). There is nothing before us to indicate that this is the case.

Upon due consideration of the pleadings, the record, and the applicable law, the court concludes that the petitioner has not established that he is entitled to habeas corpus relief based on a void judgment. Accordingly, the state's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

JAMES CURWOOD WITT, JR., JUDGE